

## Internal Revenue Service, Treasury

## § 40.6302(c)-1

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

### § 40.6302(a)-1 Voluntary payments of excise taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 40 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

[T.D. 8828, 64 FR 37677, July 13, 1999]

### § 40.6302(c)-1 Use of Government depositories.

(a) *Overview.* This section sets forth the general rule that any person required to file a quarterly return under § 40.6011(a)-1(a)(2) must make deposits of taxes reported on the return. Rules relating to the time for making a deposit and its amount are provided, including safe harbor rules for computing the amount of a deposit. Return filers generally have an obligation to make semimonthly deposits of tax in advance of the due date of the return. Under this section, taxes that are required to be deposited on the same schedule are grouped together into classes of tax and referred to collectively as “9-day rule taxes,” “30-day rule taxes,” “alternative method taxes,” or “14-day rule taxes.” Paragraph (b)(6) of this section sets forth the general rule that the deposit of tax for a semimonthly period is due by the ninth day of the following semimonthly period (the “9-day rule”). Most of the taxes to which this part 40 relates are required to be deposited in accordance with this rule (the “9-day rule taxes”). Exceptions to the 9-day rule are set forth in other sections. Unless otherwise provided, the safe harbor rules set forth in this section apply as well to deposits of alternative method and 14-day rule taxes. Section 40.6302(c)-2 (relating to taxes imposed on ozone-depleting chemicals by section 4681) provides special rules for the time to make deposits of section 4681 taxes (the “30-day rule” and “30-day rule taxes”) and the safe harbor rules for computing the amount of those deposits. Section 40.6302(c)-3 (re-

lating to taxes imposed on communications services and air transportation by chapter 33) provides an alternative method for computing the amount of deposits of chapter 33 taxes (the “alternative method” and “alternative method taxes”). Section 40.6302(c)-4 (relating to section 4081 taxes) provides a special rule under which qualified persons may make deposits of section 4081 taxes (the “14-day rule” and “14-day rule taxes”).

(b) *In general*—(1) *Semimonthly deposits required*—(i) *General rule.* Except as provided by statute or by paragraph (f) of this section, each person required under § 40.6011(a)-1(a)(2) to file a quarterly return must make a deposit of tax for each semimonthly period (as defined in § 40.0-1(c)) in which liability is incurred.

(ii) *Treatment of taxes imposed by chapter 33.* For purposes of this part 40, a tax imposed by chapter 33 (relating to communications services and air transportation) is treated as a tax liability incurred during the semimonthly period in which that tax is collected (or, in the case of the alternative method, is considered as collected).

(2) *Definition of net tax liability.* The term “net tax liability” means the tax liability for the specified period plus or minus any adjustments allowable in accordance with the instructions applicable to the form on which the return is made.

(3) *Computation of net tax liability.* The net tax liability for a semimonthly period may be computed by dividing by two the net tax liability incurred during the calendar month that includes that semimonthly period, provided that this method of computation is used for all semimonthly periods in the calendar quarter.

(4) *Failure to comply with deposit requirements.* If a person fails to make deposits as required under this part 40, that failure may be reported to the appropriate district director and the Internal Revenue Service may withdraw the person’s right to use the safe harbor rules of paragraph (c) of this section and § 40.6302(c)-2(b)(2) and (3) in computing deposits.

(5) *Amount of deposit*—(i) *In general.* The deposit of tax for each semimonthly period must be not less than

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the amount of net tax liability incurred during that semimonthly period. Except as provided under paragraph (c)(2) of this section and § 40.6302(c)-2(b)(2) (relating to safe harbor rules based on look-back quarter liability), no deposit is required for any semimonthly period in which no tax liability is incurred.

(ii) *Exceptions; cross references.* Special rules for determining the amount to deposit are provided in paragraph (c) of this section (relating to safe harbor rules), paragraph (f)(3) of this section (relating to the de minimis exception), § 40.6302(c)-2(b)(2) and (3) (relating to safe harbor rules for section 4681 taxes), and § 40.6302(c)-3(d) (relating to the alternative method for chapter 33 taxes).

(6) *Time to deposit*—(i) *In general.* The deposit of tax for any semimonthly period must be made by the ninth day of the following semimonthly period (the “9-day rule”). Thus, under the 9-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 24th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 9th day of the following month.

(ii) *Exceptions; cross references.* The 9-day rule does not apply to deposits for which rules are prescribed by paragraph (e) of this section (relating to deposits of 9-day rule taxes for September), § 40.6302(c)-2 (relating to deposits of section 4681 taxes (“30-day rule taxes”)), § 40.6302(c)-3 (relating to the alternative method for computing deposits of chapter 33 taxes (“alternative method taxes”)), or § 40.6302(c)-4 (relating to deposits by qualified persons of section 4081 taxes (“14-day rule taxes”)).

(c) *Amount of deposit; safe harbor rules*—(1) *Applicability*—(i) *In general.* This paragraph (c) provides the safe harbor rules for deposits of 9-day rule taxes, alternative method taxes, and 14-day rule taxes.

(ii) *Separate applicability to each class of tax.* The rules of this paragraph (c) are applied separately to each class of tax. For this purpose, all 9-day rule taxes are treated as one class of tax, all alternative method taxes are treated as a second class of tax, and all 14-day

rule taxes are treated as a third class of tax.

(2) *Safe harbor rule based on look-back quarter liability*—(i) *In general.* Except as provided in paragraph (c)(2)(iii) of this section, any person that made a return of tax reporting a class of tax to which this paragraph (c) applies for the second preceding calendar quarter (the “look-back quarter”) is considered to have complied with the requirement of this part 40 for deposit of taxes in that class for the current calendar quarter if—

(A) The deposit of those taxes for each semimonthly period in the current calendar quarter is not less than  $\frac{1}{4}$  of the net tax liability reported for the class of tax for the look-back quarter;

(B) Each deposit is made on time;

(C) In any case in which the due date of the return is extended under § 40.6071(a)-1(a)(2) (relating to filing a single return), a special deposit (the amount of which is determined under paragraph (c)(2)(ii) of this section) is made by the last day of the first calendar month following the end of the quarter; and

(D) The amount of any underpayment of those taxes is paid by the due date of the return.

(ii) *Amount of special deposit.* The amount of the special deposit required under paragraph (c)(2)(i)(C) of this section with respect to a class of tax is not less than the lesser of—

(A) The amount by which net tax liability with respect to taxes in that class (other than taxes imposed by chapter 33) for the current calendar quarter exceeds that net tax liability for the look-back quarter; and

(B) The amount of any underpayment of taxes in that class for the current calendar quarter.

(iii) *Modification for tax rate increase*—

(A) *Applicability.* The safe harbor rule of paragraph (c)(2)(i) of this section is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax to which this part 40 applies.

(B) *Modification.* The safe harbor rule of paragraph (c)(2)(i) of this section does not apply to a class of tax for

those calendar quarters unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than  $\frac{1}{4}$  of the tax liability the person would have had with respect to that class for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iii) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(iv) *Modification for new or reinstated taxes—(A) Applicability.* The safe harbor rule of paragraph (c)(2)(i) of this section is modified for any calendar quarter in which a person's liability for a class of tax includes liability for any new or reinstated tax. For this purpose, a new or reinstated tax is—

(1) Any tax (including an alternative method tax) that was not in effect at all times during the look-back quarter; and

(2) Any alternative method tax that was not in effect at all times during the month preceding the look-back quarter.

(B) *Modification.* The safe harbor rule of paragraph (c)(2)(i) of this section does not apply to a class of tax unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than the greater of—

(1)  $\frac{1}{4}$  of the net tax liability reported for the class of tax for the look-back quarter; or

(2) The sum of—

(i) 95 percent of the net tax liability incurred with respect to new or reinstated taxes during the semimonthly period; and

(ii)  $\frac{1}{4}$  of the net tax liability reported for all other taxes in the class for the look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iv) applies to tax liabilities for new or reinstated taxes incurred after February 28, 1997, except that paragraph (c)(2)(iv)(A)(2) of this section applies only for calendar quarters beginning after December 31, 1997.

(3) *Safe harbor rule based on current liability—(i) In general.* A person is considered to have complied with the requirement of this part 40 for deposit of

a class of tax to which this paragraph (c) applies for a calendar quarter if—

(A) The deposit of those taxes for each semimonthly period in the calendar quarter is not less than 95 percent of the net tax liability incurred with respect to those taxes during the semimonthly period;

(B) Each deposit is made on time; and

(C) In any case in which the due date of the return is extended under § 40.6071(a)-1(a)(2) (relating to filing a single return), a special deposit (the amount of which is determined under paragraph (c)(3)(ii) of this section) is made by the last day of the first calendar month following the end of the quarter; and

(D) The amount of any underpayment of those taxes is paid by the due date of the return.

(ii) *Amount of special deposit.* The amount of the special deposit required under paragraph (c)(3)(i)(C) of this section with respect to a class of tax is not less than the lesser of—

(A) An amount equal to 5 percent of net tax liability with respect to taxes in that class (other than taxes imposed by chapter 33) for the current calendar quarter; and

(B) The amount of any underpayment of taxes in that class for the current calendar quarter.

(iii) *Effective date.* This paragraph (c)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(d) *Remittance of deposits—(1) Deposits by Federal tax deposit coupon.* A completed Form 8109, *Federal Tax Deposit Coupon*, must accompany each deposit. The deposit must be remitted, in accordance with the instructions applicable to the form, to a financial institution authorized as a depository for federal taxes (as provided in 31 CFR part 214) or to a Federal Reserve bank.

(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see § 31.6302-1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302-1(h) of this chapter remains subject to the rules of this paragraph (d).

(e) *Special rules for September—(1) Deposits required.* In the case of deposits of

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9-day rule taxes for the second semi-monthly period in September, separate deposits are required for the period September 16th-26th and the period September 27th-30th.

(2) *Amount of deposit.* The deposits of 9-day rule taxes for the period September 16th-26th and the period September 27th-30th must be not less than the amount of net tax liability for 9-day rule taxes incurred during the respective periods. The net tax liability incurred during these periods may be computed by—

(i) Determining the amount of net tax liability reasonably expected to be incurred during the second semi-monthly period in September;

(ii) Treating  $\frac{11}{15}$  of that amount as the net tax liability incurred during the period September 16th-26th; and

(iii) Treating the remainder of the amount determined under paragraph (e)(2)(i) of this section (adjusted to reflect net tax liability actually incurred through the end of September) as the net tax liability incurred during the period September 27th-30th.

(3) *Time to deposit*—(i) *In general.* The deposit of 9-day rule taxes required for the period beginning September 16th must be made by September 29. The deposit required for the period ending September 30th must be made at the time prescribed in paragraph (b)(6)(i) of this section for making deposits for the second semimonthly period in September.

(ii) *Due date on Saturday or Sunday.* A deposit that would otherwise be due on September 29 must be made by September 28 if September 29 is a Saturday and by September 30 if September 29 is a Sunday.

(4) *Safe harbor rule based on look-back quarter liability.* The safe harbor rule in paragraph (c)(2)(i) of this section does not apply to 9-day rule taxes for the third calendar quarter unless—

(i) The deposit of 9-day rule taxes for the period September 16th-26th is not less than  $\frac{11}{90}$  of the net tax liability reported for 9-day rule taxes for the look-back quarter; and

(ii) The total deposit of 9-day rule taxes for the second semimonthly period in September is not less than  $\frac{1}{6}$  of the net tax liability reported for 9-day rule taxes for the look-back quarter.

(5) *Safe harbor rule based on current liability.* The safe harbor rule of paragraph (c)(3)(i) of this section does not apply to 9-day rule taxes for the third calendar quarter unless—

(i) The deposit of 9-day rule taxes for the period September 16th-26th is not less than 69.67 percent of the net tax liability for 9-day rule taxes for the second semimonthly period in September; and

(ii) The total deposit of 9-day rule taxes for the second semimonthly period in September is not less than 95 percent of the net tax liability for 9-day rule taxes for that semimonthly period.

(6) *Persons not required to use electronic funds transfer.* In the case of a person that is not required to deposit excise taxes by electronic funds transfer (a non-EFT depositor), the rules of this paragraph (e) apply with the following modifications:

(i) The periods for which separate deposits must be made are September 16th-25th and September 26th-30th.

(ii) The deposit required for the period beginning September 16th must be made by September 28. A deposit that would otherwise be due on September 28 must be made by September 27 if September 28 is a Saturday and by September 29 if September 28 is a Sunday.

(iii) The generally applicable fractions and percentage are modified to reflect the different deposit periods in accordance with the following table:

Generally applicable fractions and percentage	Modifications for non-EFT depositors
11/15 .....	10/15.
11/90 .....	10/90.
69.67 percent .....	63.33 percent.

(7) *Effective date.* This paragraph (e) is effective August 1, 1995, for all 9-day rule taxes except those imposed by section 4261 or 4271. For taxes imposed by section 4261 or 4271, this paragraph (e) applies beginning January 1, 1997.

(f) *Exceptions*—(1) *Taxes excluded.* No deposit is required in the case of the taxes imposed by section 4042 (relating to fuel used on inland waterways), section 4161 (relating to sport fishing equipment and bows and arrows), and section 4682(h) (relating to floor stocks tax on ozone-depleting chemicals). Also, no deposit is required in the case

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of any floor stocks tax described in § 40.0-1(a).

(2) *One-time filings.* No deposit is required in the case of any taxes reportable on a one-time filing (as defined in § 40.6011(a)-2(b)).

(3) *De minimis exception*—(i) *In general.* For any calendar quarter, no deposit is required if the net tax liability for the quarter does not exceed \$2,000.

(ii) *Effective date.* This paragraph (f)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(4) *Taxes excluded; certain removals of gasohol from refineries.* No deposit is required in the case of the tax imposed under § 48.4081-3(b)(1)(iii) of this chapter.

(g) *Cross references.* For provisions relating to penalties for failure to make deposit of taxes, see section 6656.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8609, 60 FR 40081, Aug. 7, 1995; T.D. 8685, 61 FR 58005, Nov. 12, 1996; T.D. 8723, 62 FR 37494, July 14, 1997; T.D. 8887, 65 FR 36326, June 8, 2000]

### § 40.6302(c)-2 Special rules for use of Government depositaries under section 4681.

(a) *Overview.* This section sets forth special rules for deposits of tax imposed by section 4681 (relating to ozone-depleting chemicals), including rules relating to the time to deposit and safe harbors. The general rules relating to deposits are set forth in § 40.6302(c)-1 and apply unless inconsistent with the rules set forth below.

(b) *In general*—(1) *Time to deposit.* In the case of tax imposed by section 4681 (section 4681 tax), the deposit of tax for a semimonthly period must be made by the last day of the second following semimonthly period (the “30-day rule”). Thus, under the 30-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 15th day of the following month and the deposit of tax for the second semimonthly period in a month is due by the end of the following month.

(2) *Amount of deposit; safe harbor rule based on look-back quarter liability*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, any person that made a return of section 4681 tax for the second preceding calendar

quarter (the “look-back quarter”) is considered to have complied with the requirement of this part 40 for deposit of that tax for the current calendar quarter if—

(A) The deposit of that tax for each semimonthly period in the current calendar quarter is not less than  $\frac{1}{2}$  of the net tax liability under section 4681 reported for the look-back quarter;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of that tax for the current calendar quarter is paid by the due date of the return.

(ii) *Modification for tax rate increases*—

(A) *Applicability.* The safe harbor rule of paragraph (b)(2)(i) of this section is modified for the first and second calendar quarters beginning on or after the effective date of—

(1) An increase in the base tax amount under section 4681(b); or

(2) A change in the tax treatment of ozone-depleting chemicals that are described in section 4682(g).

(B) *Modification.* The safe harbor rule in paragraph (b)(2)(i) of this section does not apply for those calendar quarters unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than  $\frac{1}{2}$  of the tax liability the person would have had under section 4681 for the look-back quarter if the increased base tax amount or the change in treatment had been in effect for that look-back quarter.

(iii) *Modification for new chemicals*—

(A) *Applicability.* The safe harbor rule of paragraph (b)(2)(i) of this section is modified for any calendar quarter in which a person's liability for section 4681 tax includes liability with respect to any new chemical. For this purpose, a new chemical is any chemical that was not subject to tax at all times during the look-back quarter.

(B) *Modification.* The safe harbor rule of paragraph (b)(2)(i) of this section does not apply unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than the greater of—

(1)  $\frac{1}{2}$  of the net tax liability reported under section 4681 for the look-back quarter; or

(2) The sum of—